



COUNTY OF EL DORADO

DEPARTMENT OF TRANSPORTATION

AGREEMENT FOR CONSTRUCTION SERVICES Contract No. 6053

THIS AGREEMENT made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California, acting through the governing body or board thereof (hereinafter referred to as "County"), and **MYERS AND SONS CONSTRUCTION** a LLC duly qualified to conduct business in the State of California, whose principal place of business is 4600 Northgate Blvd. Suite 100, Sacramento, CA 95834 (hereinafter referred to as "Contractor");

RECITALS

That for and in consideration of the mutual promises, covenants, agreements and conditions herein contained, the parties hereto agree with each other as follows:

1. Contract Documents

The complete Agreement (hereinafter "Agreement") between the parties consists of and is set forth in the Contract Documents. The Contract Documents consist of: (a) this Agreement and any amendments thereto in accordance with the provisions herein; (b) Exhibits to this Agreement; (c) executed Certificate of Insurance forms; (d) an executed California Form 590; (e) an executed Department of the Treasury Internal Revenue Service Form W-9 or County Payee Data Record Form, whichever is applicable; and (f) all executed Change Orders. All obligations of the parties are contained in the Contract Documents, and by acceptance of this Agreement the parties hereto agree to be bound by the provisions of all of said documents. All of said documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa, is to be executed the same as if mentioned in all of them.

In the event of any conflict between or among the terms and conditions of this Agreement and documents referred to and incorporated herein, such conflict shall be resolved by giving precedence in the order of priority identified above, beginning with (a) and ending with (f).

2. The Work

Contractor is engaged in the business of doing the services and tasks required by this Agreement. Contractor agrees to furnish, at Contractor's own cost and expense, all tools, equipment, apparatus, facilities, labor, services, materials, and all utility and transportation services to perform and complete in a good and workmanlike manner, furnished and installed, and complete and ready for use:

Emergency construction services to repair bridge structure damage caused by a motorist to the Mount Murphy Bridge, Coloma, California, as directed by County's Contract Administrator.

All materials and application methods shall be in conformance with the 2018 Caltrans Standard Specifications including any amendments thereto. The Work includes mobilization and all necessary traffic control.

And all other work as called for, and in the manner designated in, and in strict conformance with the Contract Documents adopted by County as prepared by the Contract Administrator or Project Manager, which includes, but is not limited to, the terms Engineer and Architect. Contractor shall perform the Work in accordance with all of the terms and conditions of the Contract Documents and in a safe, professional, skillful, and workmanlike

manner. Contractor is responsible for ensuring that its employees, as well as any subcontractor if applicable, perform the services and tasks required under this Agreement accordingly.

3. Location of Work

Said work is to be performed at: Mt Murphy Bridge (25C0004) on Mt. Murphy Road crossing the South Fork American River in the Coloma area of El Dorado County, California.

4. Contract Price

As compensation agreed upon for completion of said Work, including without limitation, all bonds and insurance, County agrees to pay Contractor upon the satisfactory completion and acceptance of the Work. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoices detailing the services rendered. County shall promptly pay Contractor in accordance with Public Contract Code section 20104.50.

For the purposes hereof, the billing rates shall be in accordance with the 2018 Caltrans Standard Specifications, Section 9-1.04, Force Account. Contractor may request payment for rates and items not included in Section 9-1.04, subject to County's Contract Administrator's written approval.

As compensation agreed upon for said Work, County shall pay or cause to be paid to Contractor, in full, and for the full contract price and compensation for said completion of the Work, including without limitation, all bonds and insurance, **THE NOT TO EXCEED TWENTY FOUR THOUSAND AND FIVE HUNDRED DOLLARS (\$24,500.00)** which sum constitutes the Contract Price for the complete Project (the "Contract Price").

5. Time of Completion

Time is of the essence. The Work under this Agreement shall be completed **within Ten (10) Working Days** from September 30, 2021, unless an extension of time or suspension of Work is authorized by County in writing in accordance with a Contract Change Order.

It is agreed by the parties to this Agreement that in case all the Work called for under this Agreement in all parts and requirements is not finished or completed within the number of working days as set forth above, damage will be sustained by County, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which County will sustain in the event of and by reason of the delay; and it is therefore agreed that Contractor will pay to County the sum of **ZERO DOLLARS (\$0)** per calendar day, as liquidated damages and not as a penalty, for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed herein; and Contractor agrees to pay the liquidated damages herein provided for, and further agrees that County may deduct the amount thereof from any moneys due or that may become due Contractor under this Agreement.

6. Payment

Payment shall be made to Contractor as follows:

ONE LUMP SUM UPON COMPLETION AND ACCEPTANCE OF PROJECT

Retention of 5% of the total Contract Price will be held at the option of County. Payment by County as herein provided shall not be construed as an absolute acceptance of defects in the Work or improper materials.

County shall promptly pay Contractor in accordance with Public Contract Code section 20104.50.

7. Term

This Agreement shall be effective upon final execution by both parties and shall be retroactive to cover services provided through September 30, 2021, to the date that the project is completed and accepted.

8. Payment of Prevailing Wages

Contractor shall pay and require payment of wages according to a scale of prevailing wage rates determined by California law, which scale is on file at County's Department of Transportation's principal office and shall comply with all applicable wage requirements, as set forth in Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810 and 1813. In accordance with the provisions of Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Contractor and any subcontractor employed under this Agreement shall also conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

9. Certified Payroll

As required under the provisions of Labor Code Section 1776, Contractor and any subcontractors shall keep accurate payroll records as follows:

1. The payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or subcontractors in connection with this Project.
2. A certified copy of all payroll records enumerated above shall be available for inspection at all reasonable hours at the principal office of Contractor as follows:
 - a. Make available or furnish to the employee or his or her authorized representative on request.
 - b. Make available for inspection or furnished upon request to a representative of County, the State Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State Department of Industrial Relations.
 - c. Make available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either County, the State Division of Labor Standards Enforcement, or the State Division of Apprenticeship Standards. The requesting party shall, prior to being provided the records, reimburse the costs of preparation by Contractor, subcontractor, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.
 - d. All contractors and subcontractors must furnish electronic certified payroll records directly to the Department of Industrial Relations.

10. Registration of Contractors

No contractor or subcontractor may bid on any public works project, be listed in a bid proposal for any public works project, or engage in the performance of any contract for public work unless registered with the Department of Industrial Relations pursuant to Labor Code sections 1725.5 and 1771.1.

Contractor shall post job site notices as prescribed by Title 8 of California Code of Regulations Section 16451.

11. Records Examination and Audit Requirements

Contractor and its subcontractors, if any are authorized hereunder, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering the various aspects of this Agreement. In accordance with Government Code Section 8546.7, all of the above-referenced parties shall make such materials available at their respective offices at all reasonable times during this Agreement period and for four (4) years from the date that final payment by County and all other pending matters are closed. Representatives of County, the State Auditor, and any duly authorized representative of other government agencies shall have access to any books, documents, papers, and records that are pertinent to this Agreement for audit, examination, excerpts, and transactions and copies thereof shall be furnished upon request.

12. Payment of all Federal, State, or Local Taxes

Any federal, state, or local tax payable on the articles furnished by Contractor under this Agreement shall be included in the Contract Price and paid by Contractor.

13. Compliance with all Applicable Laws

Contractor shall conform to and abide by all Federal, State, and local building, labor and safety laws, ordinances, rules, and regulations. All Work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshal, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, and any and all other applicable laws and regulations. Nothing in the Contract Documents, including but not limited to the plans and specifications, is to be construed to permit work not conforming to these codes, laws, and regulations.

14. Nondiscrimination

- A. County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Contractor's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 11102.

15. Reporting Accidents

Contractor shall prepare and submit (within 24 hours of such incidents) reports of accidents at the site and anywhere else the work is in progress in which bodily injury is sustained or property loss in excess of Five Hundred Dollars (\$500.00) occurs.

16. **Workers' Compensation**

Contractor shall comply with Labor Code Sections 3700 et seq., requiring it to obtain Workers' Compensation Insurance, and sign a certificate of knowledge thereof.

CERTIFICATE OF KNOWLEDGE - LABOR CODE SECTION 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

Signed: _____ Dated: _____

17. **Deviation from Plans and Specifications**

No deviation shall be made from the plans and/or the specifications, if any, without the prior written approval of County.

18. **Unity of Plans and Specifications**

The plans and specifications, if any, are one document, and any work shown or mentioned, in one and not in the other, or vice versa, shall be furnished or performed as though mentioned or shown in both.

19. **Relocation of Utilities**

As required by Section 4215 of the California Government Code, County will assume responsibility for the removal, relocation, and protection of main or trunk-line utility facilities existing on the construction site, if such facilities are not shown in the plans and specifications, and County shall compensate Contractor for the costs of locating and repairing damage to such facilities not due to the failure of Contractor to exercise reasonable care.

Nothing herein shall be deemed to require County to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.

If Contractor, while performing the Work under this Agreement, discovers utility facilities not identified in the Contract Documents, including the plans or specifications, Contractor shall immediately notify the Contract Administrator or Project Manager. County shall not be liable for Contractor's performance of unauthorized work.

20. **Subcontracting**

The provisions of Sections 4100-4114, inclusive, of the Public Contract Code regarding subcontracting shall apply to this Agreement, and Contractor represents that it will comply with all provisions therein. For the purposes of this Agreement, no subcontractors are authorized to perform any portion of the Work.

21. **Additional Work**

County reserves the right to make such alterations, deviations, additions to, or deletions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of work or to delete any items or portion of work, as may be deemed by the Contract Administrator or Project Manager to be necessary or advisable, and to require such additional work to be required for the proper completion of the whole Work contemplated.

Any such changes will be set forth in a written Contract Change Order (Change Order) which will specify the additional work, adjustment of performance time, if any, and basis for additional compensation, if any. Any Change Order shall not become effective until approved by the Director of Transportation, or where required, by the Board of Supervisors.

22. Termination by County for Convenience

County reserves the right to terminate this Agreement at any time, in whole or in part, for convenience upon thirty (30) calendar days written Notice of Termination. County shall issue Contractor a written notice specifying that this Agreement is to be terminated.

Upon receipt of said written notice, Contractor shall stop all work under this Agreement except: (1) work specifically directed to be completed prior to termination, (2) work the Inspector deems necessary to secure the Project for termination, (3) removal of equipment and plant from the site of the Work, (4) action that is necessary to protect materials from damage, (5) disposal of materials not yet used in the Work as directed by County, and (6) clean up of the site.

If this Agreement is terminated for County's convenience as provided herein, all finished or unfinished work and materials previously paid for shall, at the option of County, become its property. Contractor shall be paid an amount which reflects costs incurred for satisfactory work provided to the date of notification of termination. In addition, Contractor shall be paid the reasonable cost, as solely judged by County, and without profit, for all work performed to secure the Project for termination.

23. Termination by County for Cause

County may, without prejudice to any other right or remedy and after giving Contractor a minimum of ten (10) days from delivery of a written termination notice, terminate the services of Contractor if any of the following events occur:

1. Contractor is adjudged as bankrupt or insolvent.
2. Contractor makes a general assignment for the benefit of its creditors or if a trustee or receiver is appointed for Contractor or for any of its property.
3. Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws.
4. Contractor on more than one occasion fails to supply sufficient skilled workmen or suitable material or equipment.
5. Contractor on more than one occasion fails to make prompt payments to subcontractors for labor, materials, or equipment.
6. Contractor disregards the authority of County's representative, or the Engineer, if one is appointed.
7. Contractor violates Article 33.
8. Contractor otherwise violates any material provision of the Contract Documents.

County shall state in that written notice the reason(s) for the default. After that ten (10) day period has elapsed, County may terminate the services of Contractor immediately and take equipment and machinery thereon owned by Contractor and finish the Work by whatever method County may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished.

Without prejudice to other rights or remedies County may have, County may serve Contractor with an Inspector's written notice demanding satisfactory compliance with this Agreement if Contractor does any of the following:

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1. Fails to begin delivery of materials and equipment, to commence Work within the time specified, or to maintain the rate of delivery of material.
 2. Fails to execute the Work in the manner and at such locations as specified.
 3. Fails to maintain a work program which will ensure County's interest.
 4. Contractor is not carrying out the intent of this Agreement.

If Contractor does not comply with such notice within five (5) days after receiving it, or after starting to comply, fails to continue, County may exclude it from the premises and take possession of all material and equipment, and complete the Work by County's own forces, by letting the unfinished Work to another Contractor, or by a combination of such methods.

Where Contractor's services have been so terminated by County, said termination shall not affect any right of County against Contractor then existing or which may thereafter accrue. Any retention or payment of monies by County due Contractor will not release Contractor from compliance with the Contract Documents.

If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to Contractor. If the sums under this Agreement are insufficient for completion, Contractor shall pay to County within five (5) days after the completion, all costs in excess of the Contract Price. In any event, the cost of completing the Work shall be charged against Contractor and may be deducted from any money due or becoming due from County.

The provisions of this Article shall be in addition to all other rights and remedies available to County under law.

If after notice of termination, it is determined for any reason that Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued. This Agreement shall be equitably adjusted to compensate for such termination.

24. Successors and Assigns

This Agreement shall bind and inure to the heirs, devisees, assignees, and successors in interest of Contractor and to the successors in interest of County in the same manner as if such parties had been expressly named herein.

25. Assignment of Contract

Neither this Agreement, nor any part thereof, or any monies due or to become due hereunder, may be assigned by Contractor without the written approval of County. County may assign this Agreement to a lender, or any third party that assumes the obligations of County hereunder.

26. Amendments

This Agreement may be amended by mutual consent of the parties hereto. Said amendment shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

27. Separate Contracts

County reserves the right to let other contracts in connection with the Work. Contractor shall afford all other such contractors reasonable opportunity for storage of their materials, shall provide that the execution of its work properly connects and coordinates with theirs, and shall cooperate with them to the end of facilitating the Work.

28. Indemnity

To the fullest extent allowed by law, Contractor shall defend, indemnify, and hold County and its officers, directors, and employees harmless against and from any and all claims, suits, losses, damages, and liability for damages, including attorney's fees and other costs of defense brought for or on account of injuries to or death of

any person, including but not limited to, workers and the public, or on account of injuries to or death of County employees, or damage to property, or any economic, consequential or special damages which are claimed or which shall in any way arise out of or be connected with Contractor's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Contractor, subcontractors or employees of any of these, except for the active, or sole negligence of County, its officers, directors, and employees, or where expressly prescribed by statute.

The duty to indemnify and hold harmless County specifically includes the duties to defend set forth in Section 2778 of the Civil Code. The insurance obligations of Contractor are separate, independent obligations under the Contract Documents, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Contract Documents.

29. Insurance

GENERAL INSURANCE REQUIREMENTS: Contractor shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Contractor maintains insurance that meets the following requirements:

1. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
2. Commercial General Liability Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, products and completed operations, blanket contractual, and independent contractors' liability and a \$2,000,000 aggregate limit.
3. Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) is required in the event motor vehicles are used by Contractor in performance of this Agreement.
4. In the event Contractor is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than One Million Dollars (\$1,000,000).
5. Explosion, Collapse and Underground coverage is required when the scope of work includes XCU exposures.

PROOF OF INSURANCE REQUIREMENTS:

1. Contractor shall furnish proof of coverage satisfactory to County's Risk Management Division as evidence that the insurance required herein is being maintained. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
2. The County of El Dorado, its officers, officials, employees, and volunteers shall be included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies. Proof that County is named additional insured shall be made by providing the Risk Management Division with a certified copy, or other acceptable evidence, of an endorsement to Contractor's insurance policy naming County as additional insured.
3. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

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4. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
 5. Contractor shall require each of its subcontractors to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance and Workers' Compensation Insurance of the types and in the amounts specified above, or shall insure the activities of its subcontractors in its own policy in like amounts. Contractor shall also require each of its subcontractors to name Contractor and the County of El Dorado as additional insureds on each subcontractor's general and excess liability insurance policies. Upon request by County Contractor shall furnish proof of coverage satisfactory to County as evidence that the subcontractor insurance required herein is being maintained.

INSURANCE NOTIFICATION REQUIREMENTS:

1. Contractor agrees that no cancellation or material change in any policy shall become effective except upon thirty (30) days prior written notice to El Dorado County, Contracts & Procurement Unit, 330 Fair lane, Placerville, California 95667.
2. Contractor agrees that the insurance required herein shall be in effect at all times during the term of this Agreement, inclusive of the guarantee/warranty period specified herein below. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division.

ADDITIONAL STANDARDS: Certificates shall meet such additional standards as may be determined by County's Department of Transportation either independently or in consultation with County's Risk Management Division, as essential for protection of County.

COMMENCEMENT OF PERFORMANCE: Contractor shall not commence performance of this Agreement unless and until compliance with each and every requirement of the insurance provisions is achieved.

MATERIAL BREACH: Failure of Contractor to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire Agreement.

REPORTING PROVISIONS: Any failure to comply with the reporting provisions of the policies shall not affect the coverage provided to County, its officers, officials, employees, or volunteers.

PRIMARY COVERAGE: Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

PREMIUM PAYMENTS: The insurance companies shall have no recourse against County, its officers, officials, employees, and volunteers or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

CONTRACTOR'S OBLIGATIONS: Contractor's indemnity and other obligations shall not be limited by the insurance required herein and shall survive the expiration of this Agreement.

30. Independent Contractor

It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Contractor, and Contractor may perform similar work or services for others. However, Contractor shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Contractor's responsibilities or hinder Contractor's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

The parties intend that an independent contractor relationship will be created by this contract. Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Contractor. Those persons will be entirely and exclusively under the direction, supervision, and control of Contractor.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Contractor performs the work or services for accomplishing the results. Contractor understands and agrees that Contractor lacks the authority to bind County or incur any obligations on behalf of County.

Contractor, including any subcontractor or employees of Contractor, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Contractor shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Contractor. Contractor shall not be subject to the work schedules or vacation periods that apply to County employees.

Contractor shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Contractor provides for its employees.

Contractor acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

31. Force Majeure:

Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

32. Waiver

No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

33. Conflict of Interest

The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Contractor and performing work for County and who are considered to be consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Contractor covenants that during the term of this Agreement neither it, or any officer or employee of Contractor, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Contractor becomes aware of a conflict of interest related to this Agreement, Contractor shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in Article 23.

34. Licenses

Contractor warrants and represents that it holds a valid California license pursuant to the Contractors' State License Law (Business and Professions Code Sections 7000, et seq.), that its license is in good standing and that it possesses a Class License as required by the categories and type of the Work. Copies of Contractor's State Contractors' license must be provided with this Agreement.

35. Business License

County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of County of El Dorado without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Contractor warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

36. Cleaning Up

Contractor shall not allow the site of the Work to become littered with trash, rubbish, or waste material, but shall maintain the site of Work in a neat and orderly condition throughout the performance of the Work. At the end of each work day, Contractor shall clean up all debris and waste materials generated by the Work and shall properly dispose of all trash, rubbish and waste materials off site at no additional cost to County.

37. Access to the Work

County, and any state or local authorities having jurisdiction over the Project, shall at all times have access to the Work.

38. Acceptance of Work

The Work will be accepted by County in writing when the whole shall have been completed satisfactorily, as determined by County's Contract Administrator or its duly authorized representative. Acceptance of the Work shall not constitute an acceptance of latent defects nor relieve Contractor of responsibility for any act or omission which is a violation of this Agreement.

39. Resolution of Claims

Contractor's attention is invited to Public Contract Code Sections 20104, et seq., for resolution of construction claims, and specifically Section 20104.2. Claims pertaining to this Agreement shall be governed by the provisions of those sections.

Contractor's attention is directed to California Public Contract Code section 9204, which describes procedures for the resolution of claims on public works projects. Among other things, section 9204 requires the claimant to furnish reasonable documentation to support a claim, requires the public entity to respond to the claim within forty-five (45) days of receipt of the claim, and allows for the claimant to demand an informal meet and confer conference for settlement of the issues in dispute. For any portion of a claim that remains in dispute, section 9204 requires submission of the claim to nonbinding mediation. Additionally, section 9204 requires the public entity to make any payment due on an undisputed portion of the claim within sixty (60) days of the public entity's written response and to pay interest at the rate of 7 percent per annum on any amounts not paid in a timely manner. The claims procedures described herein and in any other Contract Documents are in addition to the procedures required by section 9204 and, in the event of a conflict between those various procedures, the more stringent procedures will control.

40. Environmental and Toxic Warranty

Contractor warrants that its operations concerning the Project are not and will not be in violation of any applicable federal, state, or local environmental statute, law, or regulation dealing with hazardous materials substances or toxic substances.

41. Guarantee

Final Guarantee: Contractor shall guarantee all materials and equipment furnished and work performed for a period of one (1) year. Contractor warrants and guarantees for a period of one (1) year from the date of Acceptance of the Work that the Work is free from all defects due to faulty materials or workmanship and Contractor shall promptly make such corrections as may be necessary, including repairs of any damage to other parts of the Work resulting from such defects at no cost to County. County will give notice of observed defects with reasonable promptness. In the event that Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, County may do so and charge Contractor the cost thereby incurred.

Extended Guarantees: If a guaranty exceeding one (1) year is provided by the supplier or manufacturer of any equipment or materials used in this Project, then the guarantee for such equipment or materials shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials, and Contractor shall supply County with all warranty and guaranty documents relative to equipment and materials incorporated in the job and guaranteed by its suppliers or manufacturers.

Warranty: Contractor warrants to County that materials and equipment furnished under this Agreement will be of good quality and new, unless otherwise required or permitted by this Agreement, that the Work will be free

from defects or flaws and is of the highest quality of workmanship and that the Work will conform with the requirements of this Agreement. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

If within one (1) year from the date of the Acceptance of the Work or such longer period of time as may be prescribed by law or regulations or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, Contractor shall promptly, without cost to County and in accordance with County's written instruction, correct such defective work. If work is rejected by County, defective material or work will be removed from site and replaced with non-defective materials or work. If Contractor is unable to promptly and properly correct any defective work, County may at its option have the work corrected by such other means as County deems appropriate and hold Contractor liable for all direct, indirect and consequential costs caused by such defective work. Said warranty shall apply to all work found to be "defective" which is attributable to the quality or quantity of the materials used, the quality of the workmanship or for performance of this Agreement.

42. Notice

Any notice or other correspondence required to be given under this Agreement by either party to the other may be affected by personal delivery in writing or by mail, postage prepaid. Notices personally delivered during normal business hours shall be deemed received on the actual date of delivery; mailed notices shall be deemed received one (1) day after affixed postmark. Notices and correspondence to County shall be in duplicate and shall be delivered to it as follows:

To County:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, California 95667

Attn.: Matthew Smeltzer, P.E.
Deputy Director, Engineering
Fairlane Engineering Unit

With a copy to:

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Michele Weimer
Procurement and Contracts Manager

Notices and correspondence to Contractor shall be delivered when personally delivered to, or if mailed, addressed to Contractor at:

Myers and Sons Construction, LLC
4600 Northgate Blvd. Suite 100
Sacramento, CA 95834

Attn.: Clinton C. Myers
President

Either party may change its address for notices or for its principal place of business by giving written notice pursuant to this Article.

43. California Residency (Form 590)

All independent contractors providing services to County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in

California. Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to Contractor during the term of this Agreement. This requirement applies to any Agreement/Contract exceeding \$1,500.00.

44. County Payee Data Record Form

All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

45. Taxes

Contractor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Contractor to County. Contractor agrees that it shall not default on any obligations to County during the term of this Agreement.

46. Venue

The Contract Documents and all provisions thereto shall be governed by the laws of the State of California. Any litigation arising herein shall be brought in the County of El Dorado.

47. Contract Administrator

The County Officer or employee with responsibility for administering this Agreement is Matthew Smeltzer, P.E., Deputy Director, Engineering, Fairlane Engineering Unit, Department of Transportation, or successor.

48. Authorized Signatures

The parties to this Agreement warrant and represent that the undersigned individuals executing this Agreement on their respective behalves are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

49. Partial Invalidity

If any provision, sentence, or word of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions, sentences, and words will continue in full force and effect without being impaired or invalidated in any way.

50. No Third Party Beneficiaries

Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

51. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

52. Entire Agreement

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral agreements or understandings.

Contract Administrator Concurrence:

By: _____
Matthew Smeltzer, P.E.
Deputy Director, Engineering
Fairlane Engineering Unit
Department of Transportation

Dated: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Rafael Martinez
Director
Department of Transportation

-- MYERS AND SONS CONSTRUCTION, LLC --

By: _____

Dated: _____

Clinton C. Myers,
President
"Contractor"

By: _____

Dated: _____

Clinton W. Myers
Corporate Secretary